

## **REMARKS**

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 1-4 were in the application, claims 1-3 have been cancelled and new claims 5-9 substituted therefore.

The Examiner indicated that the Information Disclosure Statement (IDS) which was filed was non-compliant. A corrected IDS is being submitted, together with the appropriate fee.

Claims 1-3 were rejected as being obvious over White in view of Barrow and Shapiro.

In conducting an obviousness analysis, "[a] fact finder should be aware . . . of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 167 L. Ed. 2d 705 (2007). This is because the genius of invention is often a combination of known elements that in hindsight seems preordained. In re Omeprazole Patent Litig., No. MDL 1291, 490 F. Supp. 2d 381, 2007 U.S. Dist. LEXIS 39670, at 400-01 (S.D.N.Y. May 31, 2007) (citation omitted) (quoting KSR, 127 S.Ct. at 1742); see also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138 (Fed. Cir. 1985), Raytheon Co. v. Roper Corp., 724 F.2d 951, 961 (Fed. Cir. 1983) (stating that "virtually every claimed invention is a combination of old elements").

The Court in KSR also wrote, "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741, 167 L. Ed. 2d 705 (2007) ("To facilitate review, this analysis should be made explicit.") (citing Kahn, 441 F.3d at 988... "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

If the prior art teaches away from combining known elements in the manner claimed by the invention at issue, discovering a successful way to combine them is less likely to be obvious. See *KSR Int'l*, 127 S. Ct. at 1740, 1745.

The KSR decision, while instructive, is readily distinguishable from the facts here. Most importantly, more than a combination of known elements is involved, as new claims 4-9 include elements and steps not found in the prior art.

White for example is an in ground yard light, which has a cap 22 with a substantial portion below ground. This cap supports a lens 36, or a diffuser 66, but there is no disclosure of an antenna embedded in a cap, the lens or the diffuser, nor the use of a prism.

Barrow does disclose a runway light that employs an optical prism, best seen in Fig. 1, showing the "flat top surface 14", and Fig. 3, showing the bottom surface 15, the cross-section of Fig. 5 confirming that nothing is embedded within the cover 12, and the cover itself does not protrude above ground. Nowhere in this patent is there any reference to the use of a moldable insulating material for producing a cap, or for co-molding any objects whatsoever.

Shapiro describes a plurality of portable warning lights that are battery operated and capable of receiving a radio signal for simultaneous operation in an array. This is a typical lantern type assembly. No portion of this device is suited to be placed below ground. While an antenna is disclosed, this is certainly not fully embedded in a moldable insulating material so as to avoid signal degradation. rather the entire antenna is exposed.

Moreover, the device of Shapiro does not have a casing with a lower portion, nor even a "cover", as the term is defined in the present invention, and it is difficult to see how one skilled in the art would use the antenna of Shapiro in either of the devices of White or Barrow.

Shapiro has a bulb 16 located between a pair of lenses, with an antenna fitted between the lenses, and a unitary cap is not found.

Also, this device would be incapable of withstanding the loads that are typically encountered in use, by even the light of Barrow.

Consequently, there is nothing in these patents which would lead one to the applicants invention. White has no antenna, nor prism, while barrow has no antenna, and both devices are significantly different in their construction details that one skilled in the art would not find the applicants invention obvious based on these patents, taken as a whole. Shapiro has an entirely different light, more properly a lantern, and it is not clear how one would integrate the antenna from Shapiro with either of the other references, and certainly nothing to suggest embedding by comolding.

Not how the antenna is well above ground in Shapiro, and as configured, would be readily damaged if used, for example, as a runway light. WEnev if combined, one would only locate the antenna between a lens and a mating structure....there is nothing to suggest the fully embedded structure of applicants' invention.

As there is nothing to support the combination of references, one skilled in the art would not find the invention obvious, and in fact would be lead away from the construction of the applicants' invention.

Based on the above amendment and remarks, favorable consideration and allowance of the application are respectfully requested. However should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application, the examiner is invited to telephone the undersigned at the number given below.

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